

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[PA117-4131; FRL- ]**

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania;  
One-Hour Ozone Attainment Demonstration Plan for the  
Philadelphia -Wilmington -Trenton Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental notice of proposed rule.

**SUMMARY:** On December 16, 1999, EPA proposed approval of the attainment demonstration plan submitted by the Pennsylvania Department of Environmental Protection (PADEP) for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. Among other things, EPA proposed approval of this SIP only if the Commonwealth of Pennsylvania submitted revised motor vehicle emissions budgets reflecting the benefits from the Tier 2/Sulfur rule and various enforceable commitments including a commitment to perform a mid-course review of the attainment demonstration. In this rulemaking, EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by PADEP. These revisions satisfy the December 16, 1999 proposed rule's requisites for submittal of an enforceable commitment relating to the mid-course review and the need to revise the motor vehicle emissions budgets to reflect the benefits of the Tier 2/Sulfur rule. The intended effect of this proposed action is to supplement our December 16, 1999 proposed approval by opening a comment period on the enforceable commitment to a mid-course review and the revised motor vehicle emissions budgets. This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before [insert date 30 days from date of publication].

**ADDRESSES:** Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Cripps, (215) 814-2179. Or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the ADDRESSES section of this document.

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever “we”, “us”, or “our” are used we mean EPA.

**I. Background**

**A. Previous Proposed Actions on the Attainment Demonstration SIP** - On December 16, 1999 (64 FR 70428), we published a notice of proposed rulemaking (NPR) proposing approval of the attainment demonstration SIP revision submitted by the Commonwealth of Pennsylvania (the Commonwealth) for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area

(the Philadelphia area). The Philadelphia area is classified as severe nonattainment for ozone and its attainment date is 2005. Our approval was contingent upon certain actions by the Commonwealth for the Philadelphia area. These actions were that the Commonwealth had to adopt and submit the following: (1) adequate motor vehicle emissions budgets including the benefits of the Tier 2/Sulfur rule (65 FR 6698, February 10, 2000); and (2) various enforceable commitments including one to perform a mid-course review of the attainment demonstration.

On December 16, 1999, EPA proposed approval of the attainment demonstrations for ten ozone nonattainment areas in the eastern United States (64 FR 70317). On July 28, 2000, we published a supplemental notice of proposed rulemaking (SNPR) on these attainment demonstrations (65 FR 46383). The comment period established by the July 28, 2000 SNPR concluded on August 28, 2000. In that SNPR, we clarified and expanded on two issues relating to the motor vehicle emissions budgets for the SIP revisions subject to all of the December 16, 1999 proposed actions. In the July 28, 2000 SNPR, we reopened the comment period to take comment on these two issues and, in the case of the Commonwealth's SIP for the Philadelphia area, to allow comment on all materials that were in the docket for the proposed action including those placed in the docket close to or after the conclusion of the initial comment period which closed on February 14, 2000. In general, the SNPR identified these materials as consisting of motor vehicle emissions budgets and revised or additional commitments submitted by the States (65 FR at 46387, July 28, 2000). On February 25, 2000 (prior to July 28, 2000 but after the February 14, 2000 close of the original comment period), PADEP submitted revised motor vehicle emissions budgets (which did not reflect the benefits from EPA's Tier 2/Sulfur rule) as well as enforceable

commitments for its portion of the Philadelphia area. On May 31, 2000, EPA notified the Commonwealth that the motor vehicle emissions budgets submitted on February 25, 2000 were adequate (see 65 FR 36438, June 8, 2000). That adequacy finding included a condition precluding the use of the emission reduction benefits from the Tier 2/Sulfur rule in conformity determinations, since those budgets did not include the Tier 2/Sulfur benefits.

As we explained in the July 28, 2000 SNPR and reiterate here, we are proposing that the 2005 attainment motor vehicle emissions budgets that we are proposing to approve with the attainment demonstration will be effective for conformity purposes only until revised attainment motor vehicle emissions budgets developed using MOBILE6 or including additional measures to fill a shortfall are submitted and found adequate. The revised MOBILE6 attainment motor vehicle emissions budgets will then apply for conformity purposes as soon as we find them adequate. We are proposing to limit the duration of our approval in this manner because we are proposing to approve the attainment demonstration and its associated motor vehicle emissions budgets only because the Commonwealth has committed to revise them with MOBILE6, or if shortfall measures are submitted. The Commonwealth submitted the requisite commitment to revise these motor vehicle emissions budgets using MOBILE6 within one year of the issuance of that model, or if shortfall measures are submitted. This commitment was subject to the comment period established in the July 28, 2000 SNPR (65 FR 46383).

**B. The Commonwealth's Additional Submissions of Revisions or Other Material Relevant to the Attainment Demonstration After August 28, 2000** - On July 19, 2001, the

Commonwealth submitted a SIP revision with revised attainment motor vehicle emissions budgets for the Pennsylvania portion of the Philadelphia area. These motor vehicle emissions budgets are for the year 2005 and incorporate the benefits of the Federal Tier 2/Sulfur rule. The Commonwealth submitted these motor vehicle emissions budgets in response to our proposed action on the Commonwealth's attainment demonstration SIP for the Philadelphia area ( 64 FR 70428, December 16, 1999). As previously explained, in that proposal we required that the benefits from the Federal Tier 2/Sulfur rule be incorporated into the 2005 attainment motor vehicle emissions budgets because the attainment demonstration for the Philadelphia area relies upon the benefits of this Federal rule.

In this July 19, 2001 submittal, the Commonwealth also included an amendment to the enforceable commitments it previously had submitted as provided in our December 16, 1999 proposed action. This amendment relates to the commitment by the Commonwealth to perform a mid-course review. The amendment clarifies that the Commonwealth will submit the mid-course review to EPA by December 31, 2003. In our December 16, 1999 NPR we proposed to approve the attainment demonstration if the Commonwealth committed to conduct and submit a mid-course review to EPA by December 31, 2003 (64 FR 70428 at 70442, December 16, 1999). The July 19, 2001 submittal also contains material relating to reasonably available control measures which will be the subject of a separate proposed rulemaking.

### **C. The Motor Vehicle Emissions Budgets Contained Within the July 19, 2001 Revision**

The July 19, 2001 revision establishes the 2005 attainment year motor vehicle emissions budgets

for the Pennsylvania portion of the Philadelphia area as 60.18 tons per day of volatile organic compounds (VOC) and 77.46 tons per day of nitrogen oxides (NOx).

**D. The Relationship of the Adequacy Review Process to the Motor Vehicle Emissions**

**Budgets Incorporating the Tier 2/Sulfur Rule Benefits** - On March 2, 1999, the D.C. Circuit Court ruled that budgets contained in submitted control strategy SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. The relationship between determining the adequacy of motor vehicle emissions budgets in a SIP versus approval of a SIP with motor vehicle emission budgets is delineated in the EPA's May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." Control strategy SIPs include rate-of-progress plans and attainment demonstrations. Affirmative adequacy determinations allow for the use of motor vehicle emissions budgets in submitted rate-of-progress plan SIPs and attainment demonstration SIPs for transportation conformity purposes. Motor vehicle emission budgets are actually approved, or disapproved, at the time EPA takes final action to approve or disapprove the SIP itself.

PADEP's July 19, 2001 submittal of revised 2005 motor vehicle emissions budgets is posted on EPA's conformity Web site (<http://www.epa.gov/oms/transp/conform/currrips.htm>) noting that EPA is taking comment on the adequacy and approvability of these budgets via rulemaking. We are forgoing the standard adequacy process because by October 15, 2001, we are currently required under a consent decree to sign either: (1) a final rule fully approving the attainment demonstration for the Philadelphia area, or (2) an action proposing a Federal implementation

plan to remedy any gaps in the attainment demonstration. We have reviewed the 2005 motor vehicle emission budgets submitted by the Commonwealth on July 19, 2001. Based on our review, we conclude that the revised motor vehicle emissions budgets meet the adequacy criteria in section 93.118 of the Transportation Conformity Regulations, and we propose to find the budgets adequate as well as to approve them. If we sign a final action approving the attainment demonstration for the Philadelphia area by the date specified in the consent decree, such an action will have the effect of approving these motor vehicle emissions budgets into the SIP along with the attainment demonstration negating the need for a separate finding of adequacy.

We are seeking public comments on this proposed rule including the adequacy of the motor vehicle emissions budgets and will accept such comments provided they are submitted by as specified in the DATES and ADDRESSES sections of this document. We will not hold a separate comment period on the adequacy of these budgets through the conformity web process. We will address all comments in our final rulemaking on the attainment demonstration. Because EPA's final rule on the 2005 attainment demonstration will, defacto, determine the approvability and adequacy of that SIP's motor vehicle emissions budgets, we will not publish a separate Federal Register notice announcing our adequacy findings.

**E. The Submitted Motor Vehicle Emissions Budgets and the Prior Restrictions on the Use of the Benefits of Federal Tier 2/Sulfur Rule in Conformity Determinations**

The December 16, 1999 NPR allowed States to submit motor vehicle emissions budgets that did not reflect the benefits of EPA's Tier 2/Sulfur rule. In the NPR, we explained that conformity

analyses in the Philadelphia area could begin including Tier 2/Sulfur program benefits once EPA's Tier 2/Sulfur rule was promulgated, provided that the attainment demonstration SIP and associated motor vehicle emissions budgets include the Tier 2/Sulfur benefits. For an area that requires all or some portion of the Tier 2/Sulfur benefits to demonstrate attainment but have not yet included the benefits in the motor vehicle emissions budgets, in this NPR we noted that our adequacy finding will include a condition that conformity determinations may not take credit for Tier 2/Sulfur until the SIP budgets are revised to reflect Tier 2/Sulfur benefits.

As explained above, on February 25, 2000, the Commonwealth submitted 2005-year motor vehicle emissions budgets for its portion of the Philadelphia area that did not include the benefits from the Tier 2/Sulfur rule. The 2005-year motor vehicle emissions budgets applied to two separate types of control strategy SIP revisions: (1) rate-of-progress and (2) attainment. On May 31, 2000, EPA notified the Commonwealth that the motor vehicle emissions budgets submitted on February 25, 2000 were adequate (see 65 FR 36438, June 8, 2000). That adequacy finding included a condition precluding the use of the emission reduction benefits from the Tier 2/Sulfur rule in conformity determinations.

The effect of today's proposed action on the 2005-year attainment motor vehicle emissions budgets submitted by PADEP on July 19, 2001 (which now reflect the Tier 2/Sulfur rule benefits), should we take final action to find them adequate and approve them, would be to supplant the attainment motor vehicle emissions budgets submitted on February 25, 2000. If approved, the motor vehicle emissions budgets in the Commonwealth's July 19, 2001 SIP



revision would be the budgets for the Pennsylvania portion of the Philadelphia area to which all future transportation plans and transportation improvement programs (TIPs) must conform.

Approval of the July 19, 2001 submittal's budgets would remove the restriction on the use of the benefits from the Federal Tier 2/Sulfur rule when demonstrating transportation plans and TIPs conform to the motor vehicle emissions budgets in the attainment demonstration SIP for the Philadelphia area. This proposed action is intended to have no effect on the rate-of-progress motor vehicle emissions budgets for 2005. Action on the rate-of-progress plans for the Pennsylvania portion of the Philadelphia area will be the subject of a separate rulemaking action.

**F. Trigger to Redetermine Conformity Within 18-months Under Section 93.104 of the**

**Conformity Rule** - Our conformity rule establishes the frequency by which transportation plans and transportation improvement programs must be found to conform to the SIP and includes trigger events tied to both submittal and approval of a SIP (40 CFR 93.104(e)). Both initial submission and approval can trigger a redetermination of conformity because it is not uncommon for the SIP to change between initial submission and final approval (61 FR 36112, July 9, 1996).

Our proposed action, should it become final, will have the effect of approving motor vehicle emissions budgets for the attainment demonstration that are substantively different than those initially submitted on February 25, 2000. We are providing advance notice to affected transportation planning agencies that a final approval of the budgets in the July 19, 2001 SIP revision will require a redetermination that existing transportation plans and TIPs conform within 18 months of the date of any such approval of these motor vehicle emissions budgets.

## **II. Re-opening of the Public Comment Period**

We are reopening the comment period for the Commonwealth's attainment demonstration SIP revision for the Philadelphia area to address the additional information that has been placed in the docket close to or after the conclusion of the last comment period established by the July 28, 2000 SNPR that concluded on August 28, 2000. These materials consist of actions that in the December 16, 1999 notice of proposed rulemaking discussed above EPA identified as necessary for approval of the attainment demonstration for the Pennsylvania portion of the Philadelphia area. Specifically these amendments are the revised motor vehicle emissions budgets and the amendment to the enforceable commitment for a mid-course review submitted by the Commonwealth on July 19, 2001.

We are proposing to approve and find adequate for conformity purposes the motor vehicle emissions budgets and revised enforceable commitment, which were submitted on July 19, 2001, as changes to the Commonwealth's attainment demonstration SIP for the Philadelphia area. We are soliciting public comment on the issues discussed in this document. Any comments received during the comment period will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

## **III. Proposed Action**

EPA is proposing to approve the revisions to the attainment plan SIP for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area submitted by the Commonwealth of

Pennsylvania on July 19, 2001. Those revisions consist of motor vehicle emissions budgets which reflect the Tier 2/Sulfur rule and the enforceable commitment to submit a mid-course review by December 31, 2003.

#### **IV. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This supplemental proposed rule on

the Commonwealth's attainment demonstration for the Philadelphia area to include motor vehicle emission budgets which reflect the benefits of the Federal Tier 2/Sulfur rule and enforceable commitment to a mid-course review as required by EPA's December 16, 1999 proposed rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

**Authority:** 42 U.S.C. 7401 et seq.

8/16/01

Dated: \_\_\_\_\_



\_\_\_\_\_  
Thomas C. Voltaggio,  
Acting Regional Administrator,  
Region III.